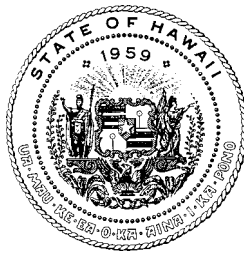


State of Hawaii

**WAGES AND HOURS
OF EMPLOYEES ON PUBLIC WORKS
and
RELATED ADMINISTRATIVE RULES**



Wage Standards Division

Department of Labor and Industrial Relations

December, 2004

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CHAPTER 103
EXPENDITURE OF PUBLIC MONEY AND PUBLIC CONTRACTS

[§103-55.5] Wages and hours of employees on public works construction contracts. (a) Before any bidder or offeror enters into a contract for construction of a public work project in excess of \$2,000, which is subject to chapter 104, the bidder or offeror shall affirm the bidder's or offeror's intent to comply with the requirements of chapter 104 by certifying that:

(1) Individuals engaged in the performance of the contract on the job site shall be paid:

(A) Not less than the wages that the director of labor and industrial relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects; and

(B) Overtime compensation at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day; and

(2) All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

(b) No contract for construction of any public work project in excess of \$2,000 shall be granted unless all the conditions of this section are met.

(c) It shall be the duty of the governmental contracting agency awarding the contract for construction of a public work project in excess of \$2,000 to enforce this section. [L 2002, c 215, §2]

CHAPTER 104
WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS

PART I. GENERAL PROVISIONS

SECTION

- 104-1 DEFINITIONS
- 104-2 APPLICABILITY; WAGES, HOURS, AND OTHER REQUIREMENTS
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- 104-4 TERMINATION OF WORK ON FAILURE TO PAY AGREED WAGES; COMPLETION OF WORK;
CONTRACT AND SPECIFICATIONS PROVISION
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Attorney General Opinions

If a contractor is found in violation of this chapter a third time within a two-year period, that contractor must be suspended from doing any work on any public work of a governmental contracting agency. Att. Gen. Op. 97-8.

PART I. GENERAL PROVISIONS

- §104-1 Definitions.** As used in this chapter, the following words and phrases shall have the following meanings:
- (1) “Basic hourly rate” means the hourly wage paid to a laborer or mechanic for work performed during nonovertime hours, but shall not include the cost to an employer of furnishing fringe benefits whether paid directly or indirectly to the laborer or mechanic as provided in paragraph (7);
 - (2) “Construction” includes alteration, repair, painting and decorating;
 - (3) “Department” means the department of labor and industrial relations;
 - (4) “Director” means the director of labor and industrial relations of the State;
 - (5) “Governmental contracting agency” means the State, any county and any officer, bureau, board, commission, or other agency or instrumentality thereof;
 - (6) “Overtime compensation” means compensation based on one and one-half times the laborers or mechanics basic hourly rate of pay plus the cost to an employer of furnishing a laborer or mechanic with fringe benefits as described in paragraph (7);
 - (7) “Wages”, “rate of wages”, “wage rates”, “minimum wages” and “prevailing wages” mean the basic hourly rate and the cost to an employer of furnishing a laborer or mechanic with fringe benefits, including but not limited to health and welfare benefits, vacation benefits, and pension benefits, whether paid directly or indirectly to the laborer or mechanic. [L 1955, c 133, pt of §2; RL 1955, §9A-1; am L Sp 1959 2d, c 1, §38; am L 1963, c 44, §1; HRS §104-1; am L 1987, c 288, §2; am L 1988, c 141, §11; am L 1995, c 181, §3]

Sections 104-1 to 104-4 designated as Part I by L 1995, c 181, §1.

§104-2 Applicability; wages, hours, and other requirements. (a) This chapter shall apply to every contract in excess of \$2,000 for construction of a public work project to which a governmental contracting agency is a party; provided that this chapter shall not apply to experimental and demonstration housing developed pursuant to section 46-15 or housing developed pursuant to chapter 201G if the cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

For the purposes of this subsection:

“Contract” includes but is not limited to any agreement, purchase order, or voucher in excess of \$2,000 for construction of a public work project.

“Governmental contracting agency” includes any person or entity that causes either directly or indirectly the building or development of a public work.

“Party” includes eligible bidders for and eligible developers of any public work and any housing under chapter 201G; provided that this subsection shall not apply to any housing developed under section 46-15 or chapter 201G if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

“Public work” means any project, including development of any housing pursuant to section 46-15 or chapter 201G, and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived either directly or indirectly from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes.

(b) Every laborer and mechanic performing work on the job site for the construction of any public work project shall be paid no less than prevailing wages; provided that:

- (1) The prevailing wages shall be not less than the wages that the director of labor and industrial relations, under the rules, shall have determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State;
- (2) The prevailing wages shall be not less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on public works in the State that are prosecuted under contract or agreement with the government of the United States; and
- (3) Notwithstanding the provisions of the original contract, the prevailing wages shall be periodically adjusted during the performance of the contract in an amount equal to the change in the prevailing wage as periodically determined by the director.

(c) No laborer or mechanic employed on the job site of any public work of the State or any political subdivision thereof shall be permitted or required to work on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the director to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the State.

(d) The contractor or the contractor’s subcontractor shall pay all mechanics and laborers employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five working days prior to the time of payment, at wage rates not less than those deemed to be prevailing, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics. The rates of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the job site, and a copy of the rates of wages required to be posted shall be given to each laborer and mechanic employed under the contract by the contractor at the time each laborer and mechanic is employed, except that where there is a collective bargaining agreement the contractor does not have to provide the contractor’s employees the wage rate schedules.

(e) The governmental contracting agency may withhold from the contractor so much of the accrued payments as the governmental contracting agency may consider necessary to pay to the laborers and mechanics employed by the contractor or any subcontractor on the job site the difference between the prevailing wages and the wages received and not refunded by the laborers and mechanics.

(f) Every contract in excess of \$2,000 for construction of a public work project and the specifications for such contract shall include provisions that set forth the requirements of subsections (a) to (e); provided that failure by the contracting agency to include those provisions in the contract or specifications shall not be a defense of the contractor or subcontractor for noncompliance with the requirements of this chapter. [L 1955, c 133, pt of §2; RL 1955, §9A-2; am L 1957, c 93, §1; am L 1959, c 27, §1 and c 98, §1; am L Sp 1959 2d, c 1, §27; am L 1965, c 198, §§1, 2; HRS §104-2; gen ch 1985; am L 1987, c 288, §3; am L 1990, c 294, §2; am L 1992, c 281, §2; am L 1997, c 350, §15; am L 2002, c 215, §3]

Cross References

General authority of labor and industrial relations department, see §26-20.

§104-3 Payrolls and payroll records. (a) Every such contract and the specifications for such contract shall contain a provision that a certified copy of all payrolls shall be submitted weekly to the governmental contracting agency for review. The general contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the director of labor and industrial relations attached to the contract, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by the contracting agency shall be reported to the general contractor and the director to effect compliance.

(b) Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the general contractor and the general contractor's subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

(c) The contractor shall make payroll records available for examination within ten days from the date of a written request by a governmental contracting agency, director, or any authorized representatives thereof. Any contractor who:

- (1) Fails to make payroll records accessible within ten days;
- (2) Fails to provide information requested for the proper enforcement of this chapter within ten days; or
- (3) Fails to keep or falsifies any record required under this chapter,

shall be assessed a penalty as provided in section 104-22(b). [L 1959, c 167, §1; am L Sp 1959 2d, c 1, §27; Supp, §9A-2.5; HRS §104-3; gen ch 1985; am L 1998, c 280, §1]

§104-4 Termination of work on failure to pay agreed wages; completion of work; contract and specifications provision. Every contract and the specifications for such contract shall contain a provision that if the governmental contracting agency finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract or the specifications, or has not received the laborer's or mechanic's full overtime compensation, the governmental contracting agency may, by written notice to the contractor, terminate the contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the governmental contracting agency for any excess costs occasioned thereby. [L 1955, c 133, pt of §2; RL 1955, §9A-3; HRS §104-4; gen ch 1985]

Attorney General Opinions

The notion of immediately suspending a contractor from doing work was contemplated as evidenced by this section's requirement that a public work contract contain specifications which allow the governmental contracting agency to "terminate the contractor's right ... to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid". Att. Gen. Op. 97-8.

§§104-5 to 11 REPEALED. L 1995, c 181, §§5, 8.

PART II. ADMINISTRATION AND ENFORCEMENT

§104-21 Governmental contracting agency responsibilities. The governmental contracting agency shall:

- (1) Pay or cause to be paid, within sixty days of a determination made by the director, directly to laborers and mechanics or to the director, from any accrued payment withheld under the terms of the contract, any wages or overtime compensation found to be due to laborers or mechanics under the terms of the contract subject to this chapter, or any penalty assessed;
- (2) Order any contractor to pay, within sixty days of a determination made by the director, any wages or overtime compensation which the contractor, or any of the contractor's subcontractors, should have paid to any laborer or mechanic under any contract subject to this chapter, or any penalty assessed which the contractor, or any of the contractor's subcontractors, should have paid to the director; and
- (3) Report to the director any violation of this chapter, the rules adopted thereunder, or the terms of the contract subject to this chapter. [L 1995, c 181, pt of §2]

§104-22 Investigation; penalties. (a) The department may conduct investigations to determine compliance with this chapter. The department may enter the job site, examine records of any contractor, either during or after the performance of any contract, or subpoena the records. The department may also interview employees during working hours on the job.

(b) If any contractor interferes with or delays any investigation by the department, the governmental contracting agency, on receipt of written notice from the director of the interference or delay, shall withhold from the contractor all further payments until the director has notified the governmental contracting agency in writing that the interference or delay has ceased. Interference or delay includes failure to provide requested records under section 104-3; failure to allow employees to be interviewed during working hours on the job; and falsification of records required under this chapter. The department shall assess a penalty of \$1,000 per project for interference or delay. For each day thereafter that the employer fails to cooperate, the director shall assess a penalty of \$100 per project. [L 1995, c 181, pt of §2; am L 1998, c 280, §2]

§104-23 Notification of violation. (a) When the department, either as a result of a report by a contracting agency or as a result of the department's own investigation, finds that a violation of this chapter or of the terms of the contract subject to this chapter has been committed, the department shall issue a notification of violation to the contractor or subcontractor involved.

(b) A notification of violation shall be final and conclusive twenty days after a copy was mailed to the violator, unless within the twenty-day period the violator files a written notice of appeal with the director.

(c) A hearing on the written notice of appeal shall be held by a hearings officer appointed by the director in conformance with chapter 91.

Hearings on appeal shall be held within sixty days of the notice of appeal and a decision shall be rendered by the hearings officer within sixty days after the conclusion of the hearing, stating the findings of fact and conclusions of law. The hearings officer may extend the due date for decision for good cause; provided that all parties agree. [L 1995, c 181, pt of §2; am L 1998, c 46, §1]

§104-24 Violations; penalties. (a) Where the department finds that a first violation of this chapter has been committed, the department shall assess a penalty equal to ten per cent of the amount of back wages found due or \$25 per offense, whichever is greater.

(b) Where the department finds that a second violation of this chapter has been committed, whether on the same contract or another, within two years of the first notification of violation, the department, after proper notice and opportunity for hearing, shall order the person or firm in violation to pay a penalty equal to the amount of back wages found due or \$100 for each offense, whichever is greater.

(c) Where the department finds that a third violation of this chapter has been committed, whether on the same contract or another, within two years of the second notification of violation, the department, after proper notice and opportunity for hearing, shall order the person or firm in violation:

- (1) To pay a penalty equal to two times the amount of back wages found due or \$200 for each offense, whichever is greater; and

(2) To be suspended from doing any new work on any public work of a governmental contracting agency for a period of three years except as provided in section 104-25(a)(2). “New work on any public work” includes any public works project in which the suspended person or firm has not begun work at the job site as of the date of the suspension order.

(d) A first, second, or third violation refers to each investigation involving one or more projects in which the department finds that a contractor has failed to comply with this chapter.

(e) For purposes of this section, “offense” means each section of this chapter under which the contractor is cited; provided that, with respect to prevailing wage and overtime citations under section 104-2, each employee and each project shall be considered a separate offense. [L 1995, c 181, pt of §2; am L 1999, c 251, §1]

§104-25 Suspension. (a) The director shall suspend a person or firm as follows:

(1) For a first or second violation, if a person or firm fails to pay wages found due, any penalty assessed, or both, the person or firm shall be immediately suspended from doing any work on any public work of a governmental contracting agency until all wages and penalties are paid in full; and

(2) For a third violation, the suspension shall be as prescribed in section 104-24(c); provided that, if the person or firm continues to violate this chapter or fails to pay wages found due or any penalty assessed, or both, then the contractor shall immediately be suspended from doing any work on any public work of a governmental contracting agency for a mandatory three-year period. If after the three-year suspension period the wages found due or penalties assessed are still unpaid, the suspension shall remain in force until payment is made in full.

(b) The director shall immediately notify the comptroller and the auditor or director of finance of the county of any suspension order.

(c) No contract shall be awarded to the person or firm so suspended or to any firm, corporation, partnership, or association in which the person or firm has an interest, direct or indirect, until three years have elapsed from the date of suspension, unless the period of suspension is reduced as herein provided. Any contract awarded in violation of this subsection shall be void. [L 1995, c 181, pt of §2; am L 1999, c 251, §2]

Attorney General Opinions

Section required a contractor to be immediately suspended from doing work on existing contract and be prohibited from entering into new contracts for future work. Att. Gen. Op. 97-8.

§104-26 Judicial review. (a) Any party to an appeal under this chapter may obtain judicial review of the decision on the appeal in the manner provided in chapter 91.

(b) Any suspension or dismissal of any complaint under this chapter shall be subject to appeal in circuit court by the aggrieved party, under section 91-14 and rule 72 of the Hawaii rules of civil procedure. [L 1995, c 181, pt of §2]

§104-27 Liability. If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics for wages or overtime compensation due under this chapter, and the contractor has failed to pay the wages or overtime compensation, the contractor and the contractor’s sureties shall be liable to the laborers and mechanics in the amount of the unpaid wages and overtime compensation due, and in an additional equal amount as liquidated damages. However, any claim for liquidated damages, insofar as the surety or sureties are concerned, shall not be paid until the claims of all other creditors have been satisfied. [L 1995, c 181, pt of §2]

§104-28 Civil action. (a) Action to recover unpaid wages or overtime compensation may be maintained in any court of competent jurisdiction by any one or more laborers or mechanics for and on behalf of oneself or themselves and others similarly situated.

(b) The court, in its action and in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow reasonable attorney’s fee and costs of the action to be paid by the defendant.

(c) It shall be no defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or overtime compensation or voluntarily made refunds.

(d) When a written request is filed by any laborer or mechanic with the director claiming unpaid wages or overtime compensation under this chapter, the director, after receiving an assignment from the laborer or mechanic, may

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bring an action in any court of competent jurisdiction to recover the amount of the claim. The consent of any laborer or mechanic to the bringing of such action by the director, unless the action is dismissed without prejudice on motion of the director, shall constitute a waiver by the laborer or mechanic of any right of action the laborer or mechanic may have under subsection (a). Any amount recovered by the director before suit and accepted by the laborer or mechanic as payment in full shall constitute a waiver of any rights under this chapter. [L 1995, c 181, pt of §2]

§104-29 Rules. Subject to chapter 91, the director shall adopt reasonable rules for determining the prevailing wages, enforcement, administration, and general purposes of this chapter. These rules shall have the force and effect of law. [L 1995, c 181, pt of §2]

§104-30 Application of this chapter to contracts entered into without regard to other laws. The fact that a contract is or was entered into without regard to chapter 103D, or upon a cost-plus-a-fixed fee basis, or cost-plus-a-fixed percentage basis, or without advertising for proposals, shall not render this chapter inapplicable to the contract, if otherwise this chapter would be applicable. [L 1995, c 181, pt of §2]

§104-31 Effect on other laws. Neither this chapter nor any rule or other action under this chapter shall supersede or impair any minimum wage or maximum hour law or any authority otherwise granted by law to provide for the establishment of specific minimum or other wage rates. [L 1995, c 181, pt of §2]

§104-32 Suspension during emergency. During a national emergency declared by the President or the Congress of the United States, or a state of emergency declared by the governor, the governor, by executive order in writing, may suspend this chapter. [L 1995, c 181, pt of §2]

§104-33 Inspection. (a) If work performed in accordance with this chapter, in excess of eight hours in any day or on a Saturday, Sunday, or legal holiday of the State, requires inspection by the State or any political subdivision thereof, the inspection shall be conducted by the State or a political subdivision, as the case may be.

(b) In such event, it shall be lawful, notwithstanding any other provision of law to the contrary, for the State or any political subdivision thereof to alter the normal working hours of public employees, as may be needed for these purposes, and to pay these public employees for all hours worked in excess of eight hours per day or on a Saturday, Sunday, or legal holiday of the State. [L 1995, c 181, pt of §2]

§104-34 Submission of collective bargaining agreement to the director. (a) Parties to a collective bargaining agreement covering classes of laborers or mechanics, which are included in the prevailing wage determinations made pursuant to this chapter, shall submit a copy of the agreement to the director within five days after execution of the agreement.

(b) Except as otherwise provided herein, the terms of the agreement shall be kept confidential by the director. The director may disclose terms of the agreement to any federal or state agency for the purpose of enforcing this chapter. [L 1995, c 181, pt of §2; am L 2002, c 215, §4]

HAWAII ADMINISTRATIVE RULES

TITLE 12
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

CHAPTER 22

**WAGE DETERMINATIONS AND THE ADMINISTRATION AND
ENFORCEMENT OF CHAPTER 104, HAWAII REVISED STATUTES**

Subchapter 1 Administration and Enforcement

- §12-22-1 Definitions
- §12-22-1.1 Transporting of materials, supplies, or equipment
- §12-22-2 Method to determine prevailing wage rates
- §12-22-3 Procedure for wage rate schedules
- §12-22-4 Method to determine fringe benefit hourly rates
- §12-22-5 Meeting prevailing wage requirements
- §12-22-6 Apprentice and trainee rates
- §12-22-7 Contract provisions
- §12-22-8 Classification of laborers and mechanics
- §12-22-8.1 Investigation of complaints
- §12-22-9 Appeal
- §12-22-10 Record keeping requirements
- §12-22-11 Rulings and interpretations
- §12-22-12 Disbursement of accrued amounts withheld on contract
- §12-22-13 Computation of time
- §§12-22-14 to 12-22-24 (Reserved)

Subchapter 2 Penalty for First Violation

- §12-22-25 Notification of violation
- §12-22-26 Penalty

Historical note: Chapter 12-22 is based substantially upon “Rule XVIII, Relating to Wage Determinations Under Chapter 104, Hawaii Revised Statutes, and the Administration and Enforcement of said Chapter” of the Department of Labor and Industrial Relations. [Eff 8/15/55; am 4/16/56; am 9/1/59; R 7/27/81]

SUBCHAPTER 1

ADMINISTRATION AND ENFORCEMENT

§12-22-1 Definitions. As used in this chapter:

“Apprentice” shall be as defined in section 372-2, Hawaii Revised Statutes.

“Average rate” means the rate obtained by adding the hourly rates of wages paid to each worker in a designated class of laborers or mechanics and dividing the sum by the total number of workers in the class.

“Basic hourly rate” shall be as defined in section 104-1, Hawaii Revised Statutes.

“Construction of public work” includes without limitation new construction, reconstruction, development, improvement, alteration, repair, renovation, painting, decorating, dredging, shoring, simultaneous sewer inspection and repair, and any other activity performed by a laborer or mechanic employed at the site of a public work or at any property used by the contractor, dedicated for the performance of the contract, such as batch plants, borrow pits, fabrication plants, mobile factories, job headquarters, and tool yards. As used in this section, “other activity performed by a laborer or mechanic employed at the site” includes the following if the activity is an integral part of or is in conjunction with a construction contract, or if there is substantial construction activity involved in a supply, service, or other type of non-construction contract:

- (1) Manufacturing or furnishing of materials, articles, supplies, or equipment on the job site;
- (2) Warranty work except when done by the manufacturer on defective products or equipment;
- (3) Demolition or excavation;
- (4) Landscaping;
- (5) Termite treatment; and
- (6) Installation at the construction site of items or articles fabricated off-site, such as shelving, drapery, and communications equipment.

“Contract” means any type of agreement over \$2,000 for construction of a public work, regardless of what the agreement may be called, including purchase orders and vouchers.

“Contractor” means the general contractor or any subcontractor, including any individual, partnership, firm, corporation, joint venture, or other legal entity, acting directly or through an agent, employee, consultant, corporate officer or corporate director, undertaking the execution of a construction contract over \$2,000 with a governmental contracting agency.

“Cost of fringe benefit” means the rate of contribution irrevocably made by a contractor to a trustee or to a third person pursuant to a fund, plan, or program in providing benefits to a laborer or mechanic for:

- (1) Health and welfare such as medical or hospital care, compensation for injuries or illness resulting from occupational activity, or insurance to provide for any of the foregoing;
- (2) Unemployment, life insurance, sickness or disability insurance, or accident insurance;
- (3) Vacation and holiday pay;
- (4) Pensions on retirement or death;
- (5) Defraying costs of apprenticeship or other similar programs; or
- (6) Other bona fide fringe benefits as determined by the director;

provided that where a contractor is required by either federal or state law to provide these benefits the rate of contribution or other costs for these benefits shall not be included.

“Department” means the department of labor and industrial relations.

“Director” shall be as defined in section 104-1, Hawaii Revised Statutes.

“Employed” includes every person paid in any manner for working in the construction of a work under a contract with a governmental contracting agency, regardless of any contractual relationship alleged to exist.

“Governmental contracting agency” shall be as defined in section 104-1, Hawaii Revised Statutes.

“Public work” shall be as defined in section 104-2(a), Hawaii Revised Statutes, and includes without limitation:

- (1) Any building, structure, road, or real property, the construction of which is undertaken:
 - (A) By authority of; and
 - (B) Through the use of funds, grants, loans, bonds, land, or other resources of the State or any county, board, bureau, authority, commission, or other agency or instrumentality thereof, to serve the interest of the general public, regardless of whether title thereof is held by a state or county agency. However, subsequent construction to fixtures or appurtenances attached to the assigned space of an individual

occupant, lessee, or tenant of the building or structure, contracted by other than a state or county agency or instrumentality thereof, shall not be subject to chapter 104, Hawaii Revised Statutes.

(2) Any building or structure constructed under private contract under the following conditions:

- (A) The property is privately owned, but the entire building or structure is leased to the State or a political subdivision;
- (B) The lease agreement between the lessor and the State or political subdivision, as lessee, was entered into prior to the construction contract; and
- (C) The construction work is performed according to plans, specifications, or criteria of the State or political subdivision.

“Trainee” means a person participating, through employment, in a schedule of work experience and who is a party to a trainee agreement approved by and registered with the department.

“USDOL” means the United States Department of Labor.

“Wages”, “minimum wages”, “prevailing wages”, “rate of wages”, and “wage rates” shall be as defined in section 104-1, Hawaii Revised Statutes. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-6)

§12-22-1.1 Transporting of materials, supplies, or equipment. (a) Chapter 104, Hawaii Revised Statutes, and these rules are applicable, but not limited to, transporting of materials, supplies, or equipment:

- (1) To or from a public work site; or
- (2) Between a public work site and either another public work site or a dedicated site;

when performed by a laborer or mechanic employed at the public work site.

(b) The following illustrate situations in which chapter 104, Hawaii Revised Statutes, and these rules are not applicable:

- (1) Delivery of materials, supplies, or equipment to a public work site if the delivery persons only drop off the items and perform no construction work at the public work site;
- (2) Hauling of excavated material away from a public work site for disposal or recycling, where the drivers are on the site only for the purpose of having their trucks filled;
- (3) Continuous hauling of material to and from a public work site, and the drivers perform no construction work at the public work site;
- (4) Delivery or removal of equipment to or from a public work site, and the delivery persons operate no equipment on the public work site. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-6)

§12-22-2 Method to determine prevailing wage rates. (a) In making prevailing wage determinations under chapter 104, Hawaii Revised Statutes, the director shall make separate findings of:

- (1) The basic hourly rate; and
- (2) The rate of contribution or cost of fringe benefits paid by the employer when the payment of the fringe benefits by the employer constitutes a prevailing practice. The cost of fringe benefits shall be reflected in the wage rate schedule as an hourly rate.

(b) The rates of wages which the director shall regard as prevailing in each corresponding classification of laborers and mechanics shall be:

- (1) The rate of wages paid to the majority of those employed in the State in the corresponding classes of laborers or mechanics on projects that are similar to the contract work; or
- (2) In the event that there is not a majority paid at the same rate, then the rate paid to the greater number, provided the greater number constitutes thirty per cent of those so employed; or
- (3) In the event less than thirty per cent of those so employed receive the same rate, then the average rate. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-3 Procedure for wage rate schedules. (a) All schedules of wage rates for laborers and mechanics and any changes thereto shall be based on:

- (1) Surveys or methods which the director may deem necessary to obtain data for wage determinations; or
- (2) Wage determinations made by the Secretary of Labor, USDOL, under the Davis-Bacon Act (40 U.S.C. §§276a-276a-7); or
- (3) Both paragraphs (1) and (2).

§12-22-3

(b) Wage rate schedules shall be regularly issued on or about February 15 and September 15 of each year. Additional wage rate schedules, addenda, and notices of changes will be issued as the director deems necessary.

(c) Requests for determination by the director of wage rates for classes of laborers and mechanics not listed on the current schedule of wage rates or for any change, modification, or review of wage rates shall be submitted by the governmental contracting agency or any interested party at least thirty calendar days before advertisement of the specifications for which the determination is sought. Exceptions from this provision shall be made only upon a proper showing in unusual circumstances.

(d) Any increase in wage rates, as determined by the director and issued in the wage rate schedule, shall be applicable during the performance of the contract, in accordance with section 104-2(a) and (b), Hawaii Revised Statutes.

(e) No wage rate determined by the director shall be less than the rate established by the Secretary of Labor (USDOL) for the corresponding class.

(f) Any changes to the wage rates shall be recognized by the director only upon complete and timely submission of the information, in accordance with section 104-11, Hawaii Revised Statutes. The effective date of these changes shall be the date of publication in the wage rate schedule and shall not be retroactive. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §§104-2, 104-11)

§12-22-4 Method to determine fringe benefit hourly rates. In determining the hourly equivalent of a monthly rate of contribution for a fringe benefit, the monthly rate of contribution shall be divided by one hundred and seventy-three hours and the quotient shall be the hourly rate. [Eff 7/27/81; comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-5 Meeting prevailing wage requirements. A contractor shall pay the prevailing wages contained in a wage rate schedule applicable to laborers or mechanics in any of the following ways:

- (1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits as specified in the wage rate schedule;
- (2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for fringe benefits in a total amount not less than the total of the fringe benefits required by the wage rate schedule;
- (3) By paying the basic hourly rate in cash directly to the laborers or mechanics and by making an additional cash payment in lieu of the fringe benefits required by the wage rate schedule; or
- (4) By paying an hourly rate, partly in cash and partly in fringe benefits, which total not less than the prevailing wages. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-6 Apprentice and trainee rates. Any apprentice or trainee wage rates established by the director shall apply only to:

- (1) Apprentices and trainees who are parties to apprenticeship and trainee agreements which have been registered with the department or recognized by the department as a USDOL nationally approved apprenticeship program; and
- (2) The number of apprentices or trainees on any public work which, in relation to the number of journeyworkers in the same craft classification as the apprentices or trainees employed by the same employer on the same public work, is not in excess of the ratio allowed for employment of apprentices and trainees by the employer under the apprenticeship or trainee standards agreed and subscribed to by the employer and registered with or recognized by the department. A registered or recognized apprentice receiving the journeyworker rate will not be considered a journeyworker for the purpose of meeting the ratio requirement. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-7 Contract provisions. The governmental contracting agency shall cause or require to be inserted in all specifications and contracts made and entered into by the agency for construction of any public work, the wage rate schedule issued by the director and any other stipulation or provision required by chapter 104, Hawaii Revised Statutes. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-8 Classification of laborers and mechanics. (a) The governmental contracting agency shall require that any class of laborers or mechanics which will be employed on a public work and for which the director has not made a wage determination shall be classified by the contractor in a manner which conforms to the classifications contained in the wage rate schedule issued by the director.

(b) If there is a disagreement on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the governmental contracting agency shall submit a written report of the issues in disagreement and refer the matter to the director for determination.

(c) If the governmental contracting agency fails to refer the disagreement to the director as provided by subsection (b) within ten days after a request in writing is made to the governmental contracting agency by any interested party, the interested party may refer the question in writing to the director. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-8.1 Investigation of complaints. Any complaint received by a governmental contracting agency with respect to matters under chapter 104, Hawaii Revised Statutes, shall be referred to the director for investigation and report. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-5)

§12-22-9 Appeal. Any person aggrieved by the director's determination made pursuant to section 12-22-8 may, within ten days after mailing of the determination, appeal in writing to the labor and industrial relations appeals board. [Eff 7/27/81; comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-6)

§12-22-10 Record keeping requirements. Each contractor shall maintain accurate and complete payroll records in English containing the following information and data on each laborer and mechanic engaged in the performance of the contract at the job site:

- (1) Name in full;
- (2) Home address;
- (3) Job classification;
- (4) Rate of pay;
- (5) Hours worked each workday and total hours worked each workweek;
- (6) Total weekly straight-time earnings;
- (7) Total weekly overtime earnings;
- (8) Total weekly gross earnings;
- (9) The amount and purpose of each deduction; and
- (10) Total net wages paid and the date paid.

[Eff 7/27/81; comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-3)

§12-22-11 Rulings and interpretations. All questions arising in any governmental contracting agency relating to the application and interpretation of chapter 104, Hawaii Revised Statutes, and of this chapter shall be referred to the director for ruling and interpretation. [Eff 7/27/81; comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-5)

§12-22-12 Disbursement of accrued amounts withheld on contract. (a) Within sixty days from the date of written request by the director, the contracting agency shall pay or transfer specified amounts from accrued payments withheld on a contract to the director for:

- (1) Wages due to laborers and mechanics;
- (2) Penalties assessed for a first or second violation; or
- (3) Both paragraphs (1) and (2).

(b) Amounts collected or transferred for back wages shall be deposited or credited to the wage claim fund of the department. Amounts collected for penalties shall be deposited or credited to the general fund.

(c) The department shall disburse from the wage claim fund any wages or overtime compensation due to laborers or mechanics. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-5)

§12-22-13

§12-22-13 Computation of time. The time in which any act provided by these rules is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. As used in this section, “holiday” includes any day designated as such pursuant to section 8-1, Hawaii Revised Statutes. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-6)

§§12-22-14 to 12-22-24 (Reserved)

SUBCHAPTER 2

PENALTY FOR FIRST VIOLATION

§12-22-25 Notification of violation. (a) Where the department, either as a result of its own investigation or as a result of a report by a contracting agency, finds that a first violation of chapter 104, Hawaii Revised Statutes, has been committed, the department shall issue a notification of violation to the contractor.

(b) A first violation refers to the first investigation in which the department finds that a contractor has failed to comply with chapter 104, Hawaii Revised Statutes, or a violation which occurs more than two years after the date of notification of first violation. A first violation investigation may involve more than one project; however, offenses shall be determined separately for each project.

(c) A notification of violation shall be final and conclusive twenty days after the date of mailing to the contractor, unless a written notice of appeal is filed with the director, as provided in section 104-5(b), Hawaii Revised Statutes. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-5)

§12-22-26 Penalty. (a) A penalty of up to \$1,000 per offense shall be assessed against a contractor for a first violation of chapter 104, Hawaii Revised Statutes.

(b) In determining the offenses committed by a contractor, the department shall assess a separate penalty for each section of chapter 104, Hawaii Revised Statutes, under which the contractor is cited, with respect to each project and each employee.

(c) The amount of the penalty for a first violation shall be determined by application of the following criteria:

(1) The severity of the offense;

(2) Whether the contractor has made a good faith effort to comply with the provisions of chapter 104, Hawaii Revised Statutes, and these rules; and

(3) Other relevant factors as determined by the director.

(d) Concurrent with or after the issuance of a notification of violation, and within a reasonable period after completion of the investigation, the department shall notify the contractor of the penalty assessed, which shall then be due and payable within twenty days from the date of notification of violation.

(e) Appropriate penalty shall be assessed even if the contractor, after being informed of the offense by the department, initiates immediate action to correct the offense. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-5)

OTHER RELATED PUBLICATIONS

**Publication
Number**

Title

H104-1	Notice to Workers (poster)
H104-2	Frequently Asked Questions About Chapter 104, Wages and Hours of Employees on Public Works Law (guide)
H104-3	Requirements of Chapter 104, HRS

Video on HRS Chapter 104, Wages and Hours of Employees on Public Works Law
VHS format (14 minutes). May be borrowed without charge.

Also available on the department website at <http://dlir.state.hi.us/>

eH104	Lawbook
eH104-2	Frequently Asked Questions About Chapter 104, Wages and Hours of Employees on Public Works Law (guide)
eH104-3	Requirements of Chapter 104, HRS



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Hilo	State Building, Room 108 75 Aupuni Street, Hilo 96720	974-6464
West Hawaii	Post Office Building 81-990 Halekii Street, Kealahou 96750 (Mailing: P.O. Box 49)	322-4808